

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE DEMAS WAI YAN,

No. C 09-3930 RS

Debtor,

TONY FU,

ORDER DENYING MOTION FOR RECONSIDERATION

Plaintiff and Appellant

V.

DEMAS YAN, et al.,

Defendants and Appellees.

Appellant Tony Fu seeks reconsideration of the Court’s decision affirming the June 12, 2009 order of the Bankruptcy Court in the underlying matter. Fu’s motion asserts without elaboration that reconsideration is warranted on grounds that, (1) the bankruptcy trustee purportedly has “admitted” that she did not “stipulate” to abandonment of pre-petition claims, (2) “existing and new evidence” allegedly has “proved” that the bankruptcy court order was based on “misinformation,” and (3) the bankruptcy estate purportedly was not a “surplus estate.” In support of reconsideration, Fu requests judicial notice of a declaration he recently filed in the bankruptcy court, portions of the transcript of a deposition of Cheuk Tin Yan taken in connection with a state court civil action, and an October 19, 2010 order entered by the bankruptcy court in the underlying matter. With the

1 exception of the bankruptcy court's order, these materials are not proper subjects for judicial notice,
2 and the request is denied. Moreover, even assuming the materials Fu has submitted were properly
3 before the Court, nothing therein constitutes a basis for reconsideration or would have supported
4 reversal of the bankruptcy court's decision even if presented prior to the decision on appeal.

5 Fu's only new argument is that the bankruptcy estate was not a "surplus estate." As noted
6 in the order affirming the bankruptcy court, Fu's appeal did not challenge the validity of the finding
7 that the estate had sufficient funds to pay all claims against it in full, and that therefore
8 determination of the abandoned claims would "have no conceivable effect on the estate." His mere
9 assertion of a contrary proposition in a motion for reconsideration is insufficient. Not only does the
10 argument come too late, but he has failed to meet his burden to show that the finding was clearly
11 erroneous.

12 Finally, the Bankruptcy Court's October 19, 2010 order, of which judicial notice is proper,
13 states that the order from which this appeal was taken would likely be set aside based on "changed
14 circumstances," and it re-imposed a restraint on the prosecution of at least some of the state court
15 actions against Fu about which he complained. Given this, Fu has failed to show why the substance
16 of his appeal is not moot, in whole or in part. Accordingly, the motion for reconsideration is denied.

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19 IT IS SO ORDERED.

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21 Dated: 12/16/10
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RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

1 **THIS IS TO CERTIFY THAT A HARD COPY OF THIS DOCUMENT WAS MAILED TO:**

2 Tony Fu
3 5813 Geary Blvd.
4 PMB 188
5 San Francisco, CA 94121

6 Demas Wai Yan
7 595 Market St No. 1350
8 San Francisco, CA 94105

9 DATED: 12/16/10

10 /s/ Chambers Staff

11 Chambers of Judge Richard Seeborg